1960

Elba Justice, Lawrence Justice, and Arthur Averett v. Standard Gilsonite Co. : Brief of Respondents

Utah Supreme Court

John C. Beaslin; Simmons, Beaslin & Nygaard; Attorneys for Plaintiffs;

Case No. 9326

IN THE SUPREME COURT
of the
STATE OF UTAH

ELBA JUSTICE, LAWRENCE JUSTICE, and ARTHUR AVERETT,

Plaintiffs and Respondents,

—vs.—

STANDARD GILSONITE COMPANY,

Defendant and Appellant.

BRIEF OF RESPONDENTS

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STATEMENT OF FACTS

Counsel for the Plaintiff's agree with the statement of facts except as otherwise noted herein.

There is absolutely nothing in the record that discloses any instructions from Pinder to McMullin to obtain the services of an independent mining contractor to open up a dormant mine shaft.

Contrary to Defendant's contentions with reference to who was in control and had the supervision over plaintiffs Lawrence Justice and Arthur Averett the court

found that all three were employees of Standard Gilsonite Company. (See Findings of Fact and Conclusions of Law.)

It would appear that had plaintiff, Elba Justice, retained the $520.00 check paid to him by Standard Gilsonite Company, it still would not have precluded the plaintiff's from collecting the balance of their claims. (See 34-10-7 Utah Code Annotated, 1953).

The plaintiffs presented their claims timely and the law suit was not delayed by any intentional acts of plaintiffs, but had to be filed pursuant to 34-10-6 (U.C.A. 1953), when it became apparent that the Defendant was not going to pay Respondents claims.

STATEMENT OF POINTS

POINT I

THE RULING OF THE DISTRICT COURT BELOW APPLYING TITLE 34, SECTION 10, PARAGRAPH 6, U.C.A. (1953) TO THIS CASE WAS NOT ERROR.

POINT II

THE DISTRICT COURT DID NOT COMMIT ERROR IN UPHOLDING THE CONSTITUTIONALITY OF TITLE 34, SECTION 10, PARAGRAPH 6, UTAH CODE ANNOTATED, (1953).

A. SAID STATUTE IS CONSTITUTIONAL AND IS NOT A DENIAL OF DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAW.

B. SAID STATUTE IS CONSTITUTIONAL WHEN APPLIED TO THIS CASE, AND DOES NOT DEPRIVE THE EMPLOYER OF DUE PROCESS OF LAW AND EQUAL PRO-

TECTION OF THE LAW WHEN THE EXISTANCE OF AN EMPLOYER EMPLOYEE RELATIONSHIP IS, IN FACT, IN DISPUTE.

ARGUMENT

POINT I

THE RULING OF THE DISTRICT COURT BELOW APPLYING TITLE 34, SECTION 10, PARAGRAPH 6, U.C.A. (1953) TO THIS CASE WAS NOT ERROR.

The District Court found that the plaintiffs were employees of the defendant company and therefor this court is not concerned with the employee-employer relationship. Defendant's own brief on page 6 states "unless the plaintiffs here were clearly employees, on the payroll . . . etc." the penalty statute would not apply.

The court in its Findings of Fact and Conclusions of Law held the plaintiffs to be "clearly employees."

Plaintiffs were furnished time sheets by Ralph O'Neill to fill out for purposes of paying them wages.

POINT II

THE DISTRICT COURT DID NOT COMMIT ERROR IN UPHOLDING THE CONSTITUTIONALITY OF TITLE 34, SECTION 10, PARAGRAPH 6, UTAH CODE ANNOTATED, (1953).

A. SAID STATUTE IS CONSTITUTIONAL AND IS NOT A DENIAL OF DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAW.

The basic and first premise that must be adhered to is that the laws as passed by the legislature are presumed to be constitutional and a statute of the type in-

volved in this case is clearly within the police power of the state to enact.

The statute involved in this matter is not a denial of due process of law or the equal protection clause of the constitution. The basic consideration involved in this statute is one of merely protecting the rights of the employees when the employer fails to pay wages that are due and owing and attached thereto is the penalty provision.

We find in the case of *Schalz v. Union School District,* Calif.—137 P2d 762, 766 (1943) the following:

> "The purpose and intent of the act is plain and its object should not be defeated by overnice construction . . . It is not the punishment of the offender in the sense ordinarily applicable to the term, but rather the recovery of the penalty as a fixed sum by way of indemnity to the public by reason of the violation of the statute, and to charge him a pecuniary liability."

Here we are presented with a question concerning the power of the State to impose penalties for violation of its statutory functions. The presumption is that such enactments are a legislative matter, and the courts should be hesitant to meddle therein. It is the usual method imposed to compel the performance of duties or conduct required by the State in carrying out its varied sovereign functions. Thus a legislature may impose any reasonable penalty it sees fit for the violation of valid regulations. There is no inhibition upon the State to impose such penalties for disregard of its police power as will insure

prompt obedience to the requirements of such regulations. (23 *Am. Jur.* 626) (Also see *Madonna v. State*—Cal. App. 2d—312 P. 2d 257-1957.)

The Madonna case, in quoting from *Schalz v. Union School District*, supra, stated that the penalty provisions as pronounced by the Court were not in violation of the due process clause. This case involved a suit to recover money that was withheld from a contractor from his final payment as a penalty when the contractor violated the labor code. The Court held that the due process clause was not violated by such a procedure.

Counsel for the defendant corporation appears to base his allegation solely upon the disproportionate pecuniary loss of the defendant corporation and sets forth examples stating the impropriety and unreasonableness of such a penalty. The examples that he discusses are not the facts as set forth in this case.

The reason for the penalty provisions in this case and in all other cases is to insure there will not be flagrant violation of the statutes as provided by the Legislature, and if and in the event the statutes are, in fact, violated, then a penalty provision is provided against the wrongdoer for the benefit and protection of the public.

We find in the case of Department of *Social Welfare of State v. Gardiner,* ..... Cal. ....., 210 P.2d 855, 856 (1949) quoting 21 RCL, page 212, the following:

> "Penalties are imposed in furtherance of some public policy and as a means of securing

> obedience to law. Persons who incur them are, either in morals or law, wrongdoers, and not simply unfortunate debtors unable to perform their pecuniary obligations."

In the above-stated case, a statute in California provided that the State of California could recover *twice the* amount paid to a person for old age assistance if it was later discovered that the person so helped had, in fact, property and assets that he had failed to disclose to the State of California; that the State could recover twice the amount paid to the person receiving assistance. The Court in that case held that it was clearly within the legislative power of the State to invoke such a penalty and that it was not unreasonable and unconstitutional.

The penalty provisions as provided in 34-10-6 (a) of the Utah Code Annotated (1953) does not fall within this category and certainly cannot be construed as being unconstitutional.

We find that in the very early case of *St. Louis v. Paul,* 64 Ark. 83, 40 S.W. 705, 37 LRA 504, 62 Am. St. Rep. 154, 173 U.S. 404, 43 L. ED. 746 (1899), that an Arkansas Legislative act requiring railroad companies to pay their employees when discharged their unpaid wages then earned without deduction, or such wages should continue at the same rate until paid, but *not to exceed* 60 *days* constitutional. (Emp. ours) The Court in that case held that such an act was not in violation of the equal protection of the law clause. The Court said that such an act was prospective and its operation and restricting future contracts only, and does not deprive

the railroad company of their property without due process of law.

A penalty provision, to be unconstitutional, must be grossly oppressive and disproportionate to the offense committed before it can, under any stretch of the imagination, be declared to be void. (See *Gooch, et al., v. Rogers, et al.,* 193 Or. 158, 238 P.2d 254, 285-286-1951.)

The cases cited in the Appellant's brief, in which the Courts have held certain penalty provisions unconstitutional is due to the fact that there is not a limitation placed upon the penalty provisions in the statute. This is basically the reason why they have been held to be unconstitutional, and there are cases which have been decided both for and against the constitutionality of penalty statutes. The weight of authority, however, favors the validity of penalty statutes, when enacted by the Legislature to correct a wilful disregard for individual rights. An accumulation of the authority and cases cited therein are discussed in 12 ALR 612, 26 ALR 1200, 1396 and the supplements thereto.

We find in the case *Nordling v. Johnson,* ..... Or. ....., 283 P2d 994, 289 P2d 420, (.....) 48 ALR 2d 1369, a case which is analogous to the instant case. The question involved in that case in the Annotation that follows has to do with the assignability of the statutory penalty when it is invoked. The Supreme Court of Oregon did not hesitate in holding that the wages due and the penalty provision for said wages was constitutional without any question whatsoever.

The penalty provision in that case provided that where a willful failure to pay a discharged employee his wages when due, then the wages shall continue at the same rate until paid, unless action therefore is commenced, but not more than 30 days. Our Statute provides that it is mandatory that the action be commenced within 60 days from the date of separation and that is exactly what was done in this case. The case involved here and the one in the Oregon case sets up a definite time for the statute to be invoked and has a cut-off date. The cases cited by counsel for the defendant are void on their face primarily because they do not put a limitation on the length of time or the amount that can be charged under the penalty provisions. Clearly the Court can hold and have held that such statutes that are of a continuing nature cannot be constitutional because the employer could never ascertain the limitation of his liability.

Our statute on the other hand is not unreasonable, capricious, arbitrary, or ambiguous, and as such, it clearly defines the amount that the employers will be charged for wilful failure to pay his employees wages due upon discharge. He is put on notice by the statute that if he fails to pay said wages and the employee makes a demand for payment of said funds that the employer will suffer a penalty, but in no case will it be for an amount greater than 60 days wages.

Based upon the cases, and more especially the *Nordling v. Johnston,* supra, there cannot be any inference to the penalty provisions in the statute attacked by the

defendant are unconstitutional. Clearly it is within the province of the Legislature to enact laws for the betterment of society and to promote the best welfare of its members and further, it is the prerogative of said legislature to envoke penalties for the enforcement of its statutes.

It is obvious that a statute in its relationship to wages and a penalty for failing to pay the same is indeed fair, reasonable and susceptible to a constitutional interpretation that it is valid.

The defendant corporation knew that if they willfully refused to pay the just claims of the plaintiffs herein, that they would be subjecting themselves to the provisions that are contained in Title 34, Section 10, paragraph 6, Utah Code Annotated, 1953. Penal statutes have for their purpose the punishment of an employer for willful failure to make payment of wages when due, and by such provisions the employee is given a preferred position with respect to the wages due and certainly this is not an unreasonable restraint upon the employer. The defendant corporation is not in any way denied due process of law or the equal protection of the law, nor have they been denied their day in Court under threat of excessive penalty.

B. SAID STATUTE IS CONSTITUTIONAL WHEN APPLIED TO THIS CASE, AND DOES NOT DEPRIVE THE EMPLOYER OF DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAW WHEN THE EXISTANCE OF AN EMPLOYER EMPLOYEE RELATIONSHIP IS, IN FACT, IN DISPUTE.

Counsel for the defendant corporation feels that said corporation has been severely and oppressively put in a position whereby they cannot have their day in Court, unless and until the employee-employer relationship is first decided. Certainly the law provides remedies to ascertain the employer-employee relationship without waiting for the statutory time of the penalty in which to file a claim has already run.

Certainly there was no question in the Courts mind that the employee-employer relationship existed and based on that fact the defendant corporation is not being severely punished because it failed to adhere to the provisions as set forth in 34-10-6 Utah Code Annotated, 1953. There is not a permanent infringement nor a temporary infringement upon the constitutional rights of the defendant corporation, and when a lawful demand is made for wages to an employee, they may either pay the wages due or refuse to pay the wages and subject themselves to the penalty provision of 34-10-6. This is not arbitrary or capricious and the defendant corporation have elected to deny the claims, subjecting themselves to the penalty provision of the statute.

The statute in its application is not a retroactive penalty provision and it is not unreasonable and burdensome upon the defendant. The statute is definite as to the time when the penalty begins to run and further throws the burden upon the plaintiffs to make a demand for their wages. For the defendant to willfully refuse to

pay said claim he subjects himself to the penalty provision of the statute.

The plaintiffs in this matter spent a great deal of time in negotiations and in trying to seek a settlement with the defendant corporation and did not deliberately wait for the penalty statute to accumulate. The plaintiffs, however, could not wait beyond the 60 day period in order to protect their rights. This statute is purely social in nature to protect a certain class of citizens, and the statute is constitutional.

CONCLUSION

It is respectfully submitted to this Court, that the statute in question herein, Title 34, Chapter 10, Section 6, Utah Code Annotated, 1953, is clearly constitutional and the lower court was correct in its decision in this matter and the Court should not be reversed.

Dated this 23rd day of October, A.D. 1960.

Respectfully submitted,

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